

Hon. Jamal N. Whitehead

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

MALYNA TIEV and JAMES NORRIS,
individually and as wife and husband, and the
marital community composed thereof,

Plaintiffs,

v.

THE STANDARD FIRE INSURANCE
COMPANY,

Defendant.

NO. 2:23-cv-00950 JNW

AGREED PRETRIAL ORDER

JURISDICTION

Jurisdiction is vested in this court by virtue of: Diversity of Citizenship pursuant to 28 U.S.C. § 1332 in that the amount in controversy exceeds \$75,000; Plaintiffs Malyna Tiev and James Norris are citizens of the State of Washington and Defendant The Standard Fire Insurance Company (Standard Fire) is a Connecticut corporation with its principal place of business in Hartford, Connecticut.

This matter was originally filed in the Superior Court of the State of Washington for King County under Cause No. 23-2-10426-9 on June 20, 2023, and then was timely removed by the Defendant to Federal Court on June 26, 2023.

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CLAIMS AND DEFENSES

The Plaintiffs will pursue at trial the following claims: (1) Consumer Protection Act violations, (2) Insurance Bad Faith, (3) Negligence, (4) Insurance Fair Conduct Act violations, and (5) Breach of Contract.

The defendant will pursue the following affirmative defenses and/or claims:

Standard Fire denies that it is liable to Plaintiff under any of the foregoing causes of action.

Standard Fire will pursue the following affirmative defenses and/or claims:

1. Plaintiffs were fully compensated by the liability limits of the tortfeasor Rachel Wehr and therefore is not entitled to Underinsured Motorist (UIM) Benefits.
2. To the extent that Plaintiffs suffered damages, Plaintiffs have failed to mitigate those damages.
3. As to some or all of Plaintiffs' claims, Plaintiffs' Complaint fails to state a claim against Standard Fire for which relief may be granted.
4. To the extent that Plaintiffs have suffered damages, any such damages may have been caused, in whole or in part, by Plaintiffs' own acts or omissions.
5. To the extent that Plaintiffs have suffered damages, any such damages may have been caused, in whole or in part, by the acts or omissions of third parties over whom Standard Fire has no control.

PLAINTIFFS' ADMITTED FACTS

The following facts are admitted by Plaintiffs:

1. A motor vehicle collision occurred on February 10, 2018 on Broadway, near 75th Street, in Everett, Snohomish County, Washington involving Plaintiffs, the driver following them, Racheal Wehr, and a third vehicle into which the Plaintiffs' vehicle was pushed after being impacted from the rear by Ms. Wehr's vehicle.
2. A witness driving immediately behind the Wehr vehicle indicates that Racheal Wehr never braked prior to impacting the rear of the Tiev vehicle, and impacted her at approximately 30 mph.

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3. Rachael Wehr was fully responsible for the occurrence of the February 10, 2018 motor vehicle collision (something noted in The Standard's claims file by the UIM adjustor on February 20, 2023).
4. Plaintiff Malyna Tiev was 0% comparatively at fault for the occurrence of the February 10, 2018 collision.
5. Racheal Wehr was insured via Allstate Insurance Company and had \$100,000 per person limits in place as of February 10, 2018 (also something confirmed by The Standard and noted in the UIM claims file).
6. Malyna Tiev filed suit against Racheal Wehr and her husband when the third-party claim could not be resolved.
7. The Standard was Plaintiffs' auto insurance carrier at the time of the February 2018 traffic collision.
8. The Plaintiffs had: (a) \$10,000 in Personal Injury Protection (PIP) coverage on her auto policy via The Standard, and (b) \$100,000 per person/\$300,000 per accident UIM limits on her policy, as well, as of February 10, 2018.
9. The Standard ultimately paid its full \$10,000 PIP policy limits in covering a portion of the Plaintiff's medical bills resulting from the February 10, 2018 motor vehicle collision.
10. Trial of the third-party claim against Defendant Wehr was set for February 27, 2023 in Snohomish County Superior Court.
11. On January 17, 2023, Allstate agreed to tender its full \$100,000 third-party policy limits to Plaintiff to resolve her claim against Ms. Wehr.
12. The Standard, consistent with *Hamiton v. Farmers Insurance Co.*, 107 Wn.2d 721 (1987), was formally placed on notice of the proposed third-party policy limits settlement with Racheal Wehr/Allstate on January 23, 2023, given the opportunity to "buy out" the underlying 3rd Party claim, asked to waive PIP reimbursement if they chose not to "buy out" the third-party claim and provided a detailed PowerPoint

1 presentation detailing the circumstances surrounding the underlying February 10,
2 2018 collision and Ms. Tiev's and Mr. Norris's claims.

3 13. After being placed on notice of the proposed policy limits \$100,000 third-party
4 settlement, Reid Mitsuyoshi was named by The Standard as the UIM adjustor for the
5 Tiev-Norris claim.

6 14. On January 24, 2023, UIM adjustor Reid Mitsuyoshi authorized settlement with the
7 third-party defendant(s) and formally agreed to waive all PIP
8 subrogation/reimbursement.

9 15. On January 25, 2023, a UIM policy limits settlement demand with numerous exhibits,
10 again including the detailed PowerPoint summarizing the claim, was sent to Reid
11 Mitsuyoshi at The Standard via email link.

12 16. On January 26, 2023, adjustor Reid Mitsuyoshi asked an in-house, Travelers
13 employed licensed nurse practitioner (LPN), Tanya Blachowicz, to review Ms. Tiev's
14 medical records and bills, and posed 4 questions for her to respond to regarding the
15 same, noting the same in the Tiev claims file.

16 17. On January 27, 2023, LPN Blachowicz accepted the review assignment per the Tiev
17 claims file.

18 18. On January 30, 2023, adjustor Reid Mitsuyoshi requested records from Warrior
19 Massage which had inadvertently not been provided with the January 25, 2023 UIM
20 settlement demand despite being referenced in the same.

21 19. On January 31, 2023, the requested Warrior Massage records were sent to adjustor
22 Reid Mitsuyoshi via email link.

23 20. Also, on the morning of January 31, 2023, LPN Blachowicz finished her review of the
24 Tiev matter, noting in the claims file that she spent 3 hours reviewing the same, and
25 prepared and placed her Review Report into the claims file.

26 21. By February 20, 2023, UIM adjustor Reid Mitsuyoshi entered into The Standard
27 claims file his evaluation of the total value of Ms. Tiev's and Mr. Norris's claims,
28 valuing the Tiev claim at between \$36,445 and \$46,445 gross, but including the \$3,334
29

1 in estimated *Winters* fees owed on the PIP in his evaluation, along with \$13,111 in
2 accepted medical bills and \$20,000-\$30,000 in general damages to arrive at said
3 number.

4 22. Adjustor Mitsuyoshi's evaluation of the claim, excluding the *Winters* fees owed as a
5 matter of law by The Standard, was thus 33.11% to 43.11% of the Allstate \$100,000
6 third-party policy limits settlement offer.

7 23. No value was placed on husband James Norris's independent loss of consortium claim
8 per UIM adjustor Reid Mitsuyoshi's claims file notations.

9 24. On February 21, 2023, UIM adjustor Reid Mitsuyoshi communicated to counsel for
10 the claimants that in his opinion the claimants had been fully compensated by the
11 Allstate policy limits and tendered no monetary offer on claimant's UIM claim.

12 25. On March 1, 2023, via email, adjustor Reid Mitsuyoshi informed counsel for the
13 claimants that The Standard would not agree to arbitrate the claimant's UIM claim
14 and provided the requested certified copy of the Tiev-Norris policy to counsel.

15 26. Also on March 1, 2023, in this same email, adjustor Mitsuyoshi offered to engage in
16 pre-filing mediation, but asked that their insureds share the cost of paying the
17 mediator.

18 27. In response, on March 2, 2023, counsel for the claimants informed adjustor
19 Mitsuyoshi, also via email, that consistent with *Kenworthy v. Pennsylvania General*
20 *Insurance Co.*, 113 Wn.2d 309 (1989) (insurer must pay UIM arbitration fees so as to
21 not reduce insured's coverage) their insureds would engage in pre-filing mediation
22 only if The Standard paid 100% of the cost of the mediation, and also invited payment
23 under *Geico v. Beasley* of all uncontested amounts on the UIM claim given Mr.
24 Mitsuyoshi's claim that he had not made a "zero offer."

25 28. On March 6, 2023, adjustor Mitsuyoshi agreed that The Standard would pay the full
26 cost of the mediation and was referring the matter out to defense counsel.

29. On May 1, 2023, a half-day mediation was held with mediator Brad Davis, with The Standard being represented by then-counsel Gordon Klug and the claimants by the undersigned.

30. No monetary UIM offer was ever made to either claimant by The Standard or its representatives at this mediation.

31. On June 20, 2023, suit was filed against The Standard by claimants in King County Superior Court.

32. On June 26, 2023, counsel for The Standard filed a Notice of Removal, and this matter was removed to Federal Court.

33. No offer of settlement was ever made to the claimants until June 12, 2024 when present counsel for The Standard tendered an offer.

DEFENDANT'S ADMITTED FACTS

The following facts are admitted by Standard Fire:

34. A motor vehicle collision occurred on February 10, 2018 in Everett, Washington involving Plaintiffs, Racheal Wehr, and a third vehicle.

35. Rachael Wehr was fully responsible for the occurrence of the February 10, 2018 motor vehicle collision.

36. Plaintiff Malyna Tiev was 0% comparatively at fault for the occurrence of the February 10, 2018 collision.

37. Racheal Wehr was insured via Allstate Insurance Company and had \$100,000 per person limits in place as of February 10, 2018.

38. Standard Fire was Plaintiffs' auto insurance carrier at the time of the February 2018 traffic collision.

39. The Plaintiffs had: (a) \$10,000 in Personal Injury Protection (PIP) coverage on her auto policy via Standard Fire, and (b) \$100,000 per person/\$300,000 per accident UIM limits on her policy, as well, as of February 10, 2018.

40. Standard Fire paid its full \$10,000 PIP policy limits.

- 1 41. On January 17, 2023, Allstate agreed to tender its full \$100,000 third-party policy
2 limits to Plaintiff to resolve her claim against Ms. Wehr.
- 3 42. Standard Fire was formally placed on notice of the proposed third-party policy limits
4 settlement with Racheal Wehr/Allstate on January 23, 2023 and provided a
5 PowerPoint presentation.
- 6 43. On January 24, 2023, UIM adjustor Reid Mitsuyoshi authorized settlement with the
7 third-party defendant(s) and formally agreed to waive all PIP
8 subrogation/reimbursement.
- 9 44. On January 25, 2023, a UIM policy limits settlement demand was sent to Reid
10 Mitsuyoshi at Standard Fire.
- 11 45. On January 26, 2023, adjustor Reid Mitsuyoshi asked a licensed nurse practitioner
12 (LPN), Tanya Blachowicz, to review Ms. Tiev's medical records and bills.
- 13 46. On January 30, 2023, adjustor Reid Mitsuyoshi requested records from Warrior
14 Massage which had not been provided with the January 25, 2023 UIM settlement
15 demand despite being referenced in the same.
- 16 47. By February 20, 2023, UIM adjustor Reid Mitsuyoshi valued the Tiev claim at
17 between \$36,445 and \$46,445.
- 18 48. On February 21, 2023, UIM adjustor Reid Mitsuyoshi communicated to counsel for
19 the claimants that the claimants had been fully compensated by the Allstate policy
20 limits.
- 21 49. On March 1, 2023, via email, adjustor Reid Mitsuyoshi informed counsel for the
22 claimants that Standard Fire would not agree to arbitrate the claimant's UIM claim
23 and provided the requested certified copy of the Tiev-Norris policy to counsel.
- 24 50. Also on March 1, 2023, in this same email, adjustor Mitsuyoshi offered to engage in
25 pre-filing mediation.
- 26 51. In response, on March 2, 2023, counsel for the claimants informed adjustor Mitsuyoshi
27 their insureds would engage in pre-filing mediation only if Standard Fire paid 100%
28 of the cost of the mediation.
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52. On March 6, 2023, adjustor Mitsuyoshi agreed that Standard Fire would pay the full cost of the mediation and was referring the matter out to defense counsel.

53. On May 1, 2023, a half-day mediation was held with mediator Brad Davis.

54. On June 20, 2023, suit was filed against Standard Fire by claimants in King County Superior Court.

55. On June 26, 2023, counsel for Standard Fire filed a Notice of Removal, and this matter was removed to Federal Court.

ISSUES OF LAW

The following are the issues of law to be determined by the court:

1. There is a pending motion for summary judgment filed by The Standard (Doc. No. 21) seeking dismissal of Plaintiffs' causes of action for bad faith, negligence, violation of the Consumer Protection Act, and violation of the Insurance Fair Conduct Act.

EXPERT WITNESSES

(a) Each party has retained one (1) medical litigation expert witness and one (1) bad faith/insurance expert witness. No experts not properly identified should be allowed to testify. The names and addresses of the expert witness(es) to be used by each party at the trial and the issue upon each will testify is:

On Behalf of Plaintiffs:

(b) Non-Litigation Witnesses with Expert Credentials: Plaintiff's treating doctors, Benjamin Lacy, M.D. and Yung Lee, M.D., may be called to testify regarding their care and treatment of Plaintiff Malyna Tiev, and can be expected to express any opinions formulated by them during the course of their treatment of the Plaintiff, or in the case of Dr. Lacy, included within his sworn Declaration previously executed by him, including the permanency of the Plaintiff's injuries and symptoms. They are, however, treating physicians of Plaintiff Tiev, not litigation experts, but may still be expected to express any opinions contained in their records, Reports, Declarations or formulated by them during the course of their care and treatment of the Plaintiff. Depositions of Dr. Lee and Dr. Lacy were not requested.

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1 (c) The names and address of the litigation-retained expert witness(es) to be used by each
2 party at the trial and the issue upon which each will testify is:

- 3 1. David E. Spanier, MD
4 4035 120th Avenue SE
5 Bellevue, WA 98006

6 Dr. Spanier is board certified in physical medicine and rehabilitation, as well as in pain
7 medicine. Dr. Spanier will offer expert opinion medical testimony regarding all matters contained in
8 his deposition previously taken herein, as well as in his report dated January 3, 2023, and his
9 addendums to the same dated January 16, 2023, January 19, 2023, and July 23, 2024.

10 These opinions will include, but are not necessarily limited to the following topics: opinions
11 and conclusions about the nature and extent of the Plaintiff's crash-related injuries, the
12 reasonableness, necessity and crash-relatedness of the Plaintiff's claimed past treatment and medical
13 bills (to the extent necessary), any opinions he may have regarding the Plaintiff's pre-crash medical
14 history and alleged pre-existing conditions (or the absence or non-symptomatic nature thereof), any
15 opinions he may have regarding the appropriateness and crash- relatedness of Plaintiff's post-crash
16 treatment, the permanency of the Plaintiff's injuries and her future treatment needs, and the costs
17 thereof.

18 He can also be expected to comment upon the defense medical examination report(s) of
19 defendant's hired physician, upon the comments from Tanya Blachowicz, the in-house LPN who
20 reviewed the Plaintiff's claim for The Standard, the nature and estimated costs of Plaintiff's future
21 care and care needs (if any), and will further employ one or more of the anatomical illustrations/
22 drawings/medical aids/items to illustrate the specific nature, location and extent of the Plaintiff's
23 incident-related injuries and treatment, including her past injections, and will otherwise explain the
24 Plaintiff's injuries via use of the same.

25 Dr. Spanier will, in addition to those items referred to/listed in his report (if issued), also
26 review the Plaintiff's relevant medical records, any reports/Declarations from other treating or expert
27 health care providers, reports from defense experts, the Plaintiff's diagnostic films and/or billings,
28 her interrogatory responses, her deposition, the depositions of other relevant health care providers or
29 persons and may rely upon the same as a basis for his testimony and/or in testifying at the time of

1 trial. He will also testify about his conversation with Dr. Lee, the Plaintiff's current treating physician
2 at Evergreen Health, as well.

3 2. Rob Dietz
4 PMB 390
5 3405 172nd St. NE, #5
6 Arlington, WA 98223

7 Mr. Dietz is an expert with respect to claims handling and claims practices.

8 Mr. Dietz will offer expert testimony regarding all matters contained in his report dated March
9 18, 2024, including his opinions and conclusions about the bad faith actions of Standard Fire in the
10 handling and adjustment of the Tiev-Norris claim, as well as to all matters addressed or touched upon
11 by him in his deposition taken herein.

12 He can also be expected to comment upon the report and opinions of Jerry Hartmann,
13 defendant's hired claims specialist (if any) and will further base his opinions upon the depositions
14 taken herein of the parties and their representatives, including the Plaintiffs, adjustor Reid Mitsuyoshi
15 and in-house LPN Tanya Blachowicz, as well as reports issued by Mr. Hartmann in other cases for
16 defense counsel and/or Standard Fire/Travelers in the past.

17 3. Dr. Benjamin Lacy
18 Pacific Medical Centers
19 19401 40th Avenue W
20 Suite 230
21 Lynnwood, WA 98036

22 *See*, subsection (b) above.

23 4. Dr. Yung Lee
24 EvergreenHealth
25 Evergreen Rehabilitation Services
26 12039 NE 128th St Ste 500, Kirkland, WA, 98034

27 *See*, subsection (b) above, and the July 23, 2024, report of Dr. Spanier detailing his
28 conversation with Dr. Lee about Ms. Tiev.

29 On behalf of Defendant

1. Dr. Patrick N. Bays
c/o Lether Law Group
1848 Westlake Ave, Suite 100

Seattle, WA 98109
(206) 467-5444

Dr. Patrick N. Bays is a board-certified orthopedic surgeon who performed Plaintiff Malyna Tiev's Independent Medical Evaluation. Dr. Patrick N. Bays will be called to testify as to the examination, his report, the nature and extent of Plaintiff's injuries, as well as her damages.

2. Gerald Hartmann
c/o Lether Law Group
1848 Westlake Ave. N., Ste. 100
Seattle, WA 98109
(206) 467-5444

Mr. Hartmann is Standard Fire's claims handling expert. Mr. Hartmann will be called to testify to his opinions that SF's conduct was consistent with industry custom and standard for the handling of UIM insurance claims.

OTHER WITNESSES

The names and addresses of witnesses, other than experts, to be used by each party at the time of trial and the general nature of the testimony of each are:

(a) On behalf of Plaintiffs:

Witness	Address	Testimony	Will Testify/ Possible	By Depo
Malyna Tiev	c/o Quick Law Group 1621 114 th Ave SE Suite 228 Bellevue, WA 98004	Regarding the allegations made in the Complaint in this matter, including damages.	Will Testify	
James Norris	c/o Quick Law Group 1621 114 th Ave SE Suite 228 Bellevue, WA 98004	Regarding the allegations made in the Complaint in this matter, including damages.	Will Testify	
Reid Mitsuyoshi	c/o Lether Law Group 1848 Westlake Ave N Suite 100 Seattle, WA 98109	Regarding UIM claims handling		By Depo

Witness	Address	Testimony	Will Testify/ Possible	By Depo
Tanya Blachowicz, LPN	c/o Lether Law Group 1848 Westlake Ave N Suite 100 Seattle, WA 98109	Regarding Defendant's medical opinion		By Depo
Dr. Yung Lee	EvergreenHealth Evergreen Rehabilitation Services 12039 NE 128 th St Ste 500, Kirkland, WA, 98034	Regarding Malyna Tiev's injuries from the February 10, 2018 traffic collision	Possible	
Dr. Benjamin Lacy	Pacific Medical Centers 19401 40 th Avenue W Suite 230 Lynnwood, WA 98036	Regarding Malyna Tiev's injuries from the February 10, 2018 traffic collision	Possible	
Tracy Jacoby	2024 Columbia Ave. Everett, WA 98203 (last known address)	Regarding the February 10, 2018 traffic collision and all matters discussed in her sworn Declaration dated 1/30/23.	Possible	
Racheal Wehr	2409 74 th Street S.E. Everett, WA 98203 (last known address)	Regarding the February 10, 2018 traffic collision and all matters testified to her in her deposition taken in the underlying 3 rd party action.	Possible	

(b) On Behalf of Defendant:

Witness	Address	Testimony	Will Testify/ Possible	By Depo
Reid Mitsuyoshi	c/o Lether Law Group 1848 Westlake Ave N Suite 100 Seattle, WA 98109	Regarding Standard Fire's claims handling and evaluation of Plaintiffs claim, and Standard Fire's affirmative defenses.	Will Testify	

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EXHIBITS**(a) Plaintiffs' Exhibits**

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
1	Police Report	Agreed	Disputed	FRE 802	
2	Dec – Tracy Jacoby	Agreed	Disputed	FRE 802	
3	Wehr car photo 1 (front of vehicle)	Agreed	Agreed		
4	Wehr car photo 2 (front of vehicle)	Agreed	Agreed		
5	Wehr car photo 3 (rear of vehicle)	Agreed	Agreed		
6	Tiev vehicle photo – rear end	Agreed	Agreed		
7	Third involved vehicle photo – rear end	Agreed	Agreed		
8	Wehr vehicle Prop damage repair cost	Agreed	Disputed	FRE 802 FRE 702	
9	Tiev vehicle prop damage repair cost	Agreed	Disputed	FRE 802 FRE 702	
10	Scene with debris photo	Agreed	Agreed		
11	UIM claim PowerPoint	Agreed	Disputed	FRE 802 FRE 602 FRE 704 MIL FRE 805	
12	Chart Note 2/14/18 (Burdine)	Agreed	Disputed	FRE 802 FRE 702	
13	Chart Note 2/28/18 (Phone Encounter)	Agreed	Disputed	FRE 802 FRE 702	
14	Chart Note 2/28/18 (Burdine)	Agreed	Disputed	FRE 802 FRE 702	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
15	Chart Note 4/3/18 (Phone Encounter)	Agreed	Disputed	FRE 802 FRE 702	
16	Chart Note 4/12/18 (Burdine)	Agreed	Disputed	FRE 802 FRE 702	
17	Chart Note 5/24/18 (Burdine)	Agreed	Disputed	FRE 802 FRE 702	
18	Chart Note 6/19/18 (Lacey)	Agreed	Disputed	FRE 802 FRE 702	
19	Chart Note 7/20/18 (Lacey)	Agreed	Disputed	FRE 802 FRE 702	
20	Chart Note 12/10/19 (Lacey)	Agreed	Disputed	FRE 802 FRE 702	
21	Chart Note 8/23/22	Agreed	Disputed	FRE 802 FRE 702	
22	Declaration Benjamin Lacey, MC	Agreed	Disputed	FRE 802 FRE 804	
23	Spanier Initial Report 1/3/23	Agreed	Disputed	FRE 802 FRE 804	
24	Spanier Report Addendum 1/16/23	Agreed	Disputed	FRE 802 FRE 804	
25	Spanier Report Addendum 1/19/23	Agreed	Disputed	FRE 802 FRE 804	
26	Spanier Report Addendum 7/23/24	Agreed	Disputed	FRE 802 FRE 804	
27	Report of Ron Dietz dated 3/18/24	Agreed	Disputed	FRE 802 FRE 804	
28	Chart Note – Dr. Lee 4/2/24	Agreed	Disputed	FRE 802 FRE 804	
29	Chart Note – Dr. Lee 5/9/23	Agreed	Disputed	FRE 802 FRE 702	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
30	Chart Note – Dr. Lee 6/13/23	Agreed	Disputed	FRE 802 FRE 702	
31	Records – EvergreenHealth – Lee records (5.9.23 – 5.18.23)	Agreed	Disputed	FRE 802 FRE 702	
32	Bills – Pacific Medical Centers	Agreed	Disputed	FRE 802 FRE 702	
33	Bills – Vida Integrated Health – Chiropractic	Agreed	Disputed	FRE 802 FRE 403	
34	Bills – Vida Integrated Health - Massage	Agreed	Disputed	FRE 802 FRE 403	
35	Bills – Vida Integrated Health – Physical Therapy	Agreed	Disputed	FRE 802 FRE 403	
36	Bills – Daisy Herb Acupuncture	Agreed	Disputed	FRE 802 FRE 403	
37	Bills – Warrior Massage	Agreed	Disputed	FRE 802 FRE 403	
38	Bills – EvergreenHealth – 4/2/23	Agreed	Disputed	FRE 802 FRE 403	
39	Bills – EvergreenHealth – 5/9/23	Agreed	Disputed	FRE 802 FRE 403	
40	Bills – EvergreenHealth 6/13/23	Agreed	Disputed	FRE 802 FRE 403	
41	Order Granting Plaintiff's MSJ on Bills (6/24/22)	Agreed	Disputed	FRE 802 FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
42	High-Density Round Foam Roller receipt	Agreed	Disputed	FRE 802 FRE 403	
43	Massage gun and neck massager receipt	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
44	Ergonomic office chair receipt	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
45	Thera Cane massager receipt	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
46	Adjustable computer stand receipt	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
47	Back and neck massager pillow receipt	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
48	Photo Ergo desk 1	Agreed	Disputed	FRE 802 FRE 403 FRE 402	
49	Photo Ergo desk 3	Agreed	Disputed	FRE 403	
50	Photo Ergo Keyboard	Agreed	Disputed	FRE 403	
51	Photo at work; back support visible	Agreed	Disputed	FRE 403	
52	Photo at work; support on mid-upper back	Agreed	Disputed	FRE 403	
53	Illustrative – Trigger Point Injections 1	Agreed	Disputed	FRE 403	
54	Illustrative – Trigger Point Injections 2	Agreed	Disputed	FRE 403	
55	Illustrative – Trigger Point Injections 3	Agreed	Disputed	FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
56	Illustrative – Medial Branch Block 1	Agreed	Disputed	FRE 403	
57	Illustrative – Medial Branch Block 2	Agreed	Disputed	FRE 403	
58	Illustrative – Medial Branch Block 3	Agreed	Disputed	FRE 403	
59	Photo – Malyna – Close-up	Agreed	Disputed	FRE 403	
60	Photo – Malyna – Close-up of MT	Agreed	Disputed	FRE 403	
61	Photo Malyna in front of Henredon sign	Agreed	Disputed	FRE 403	
62	Photo – Malyna – Hiking with 3 others	Agreed	Disputed	FRE 403	
63	Photo Malyna hiking on trail	Agreed	Disputed	FRE 403	
64	Photo Malyna on trail above lake	Agreed	Disputed	FRE 403	
65	Photo Malyna – mechanical bull riding	Agreed	Disputed	FRE 403	
66	Photo Malyna skiing at top of slope	Agreed	Disputed	FRE 403	
67	Photo Malyna – in flowers	Agreed	Disputed	FRE 403	
68	Photo Malyna with dolphin	Agreed	Disputed	FRE 403	
69	Photo Malyna-Jim hiking at Multnomah Falls	Agreed	Disputed	FRE 403	
70	Photo snowboarding at top of mountain	Agreed	Disputed	FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
71	Photo car racing	Agreed	Disputed	FRE 403	
72	Photo Snowboarding	Agreed	Disputed	FRE 403	
73	Photo on elephant in Cambodia	Agreed	Disputed	FRE 403	
74	Photo Malyna in White Dress; Space Needle in view	Agreed	Disputed	FRE 403	
75	Photo Malyna with boys in car	Agreed	Disputed	FRE 403	
76	Photo Tiev family in front of christmas tree	Agreed	Disputed	FRE 403	
77	Photo Kids with Aunt-Uncle	Agreed	Disputed	FRE 403	
78	Photo Sister Channary Tiev with family in Cambodia	Agreed	Disputed	FRE 403	
79	Photo sons on play scooter	Agreed	Disputed	FRE 403	
80	Family photo (J, T, Kids and A-U)	Agreed	Disputed	FRE 403	
81	Photo Malyna hiking Multnomah Falls	Agreed	Disputed	FRE 403	
82	Photo Wedding in Cambodia 1	Agreed	Disputed	FRE 403	
83	Photo Wedding in Cambodia 2	Agreed	Disputed	FRE 403	
84	Photo Wedding in Cambodia 3	Agreed	Disputed	FRE 403	
85	Photo Wedding in Cambodia 4	Agreed	Disputed	FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
86	Photo US Naturalization certificate	Agreed	Disputed	FRE 403	
87	Photo Malyna at work with massager (family on screen)	Agreed	Disputed	FRE 403	
88	Photo Boeing PT (1)	Agreed	Disputed	FRE 403	
89	Photo Boeing PT (2)	Agreed	Disputed	FRE 403	
90	Photo Boeing PT (3)	Agreed	Disputed	FRE 403	
91	Photo using massage gun at work	Agreed	Disputed	FRE 403	
92	Photo using neck unit in work chair	Agreed	Disputed	FRE 403	
93	Photo spinal massage unit	Agreed	Disputed	FRE 403	
94	Photo using massage unit - mid back at work	Agreed	Disputed	FRE 403	
95	Photo using Theracane massager at work	Agreed	Disputed	FRE 403	
96	Life Expectancy table (WPI)	Agreed	Disputed	FRE 403	
97	The Standard PIP Payment log	Agreed	Disputed	FRE 403 FRE 402	
98	Claims File excerpts (TSFIC_000001-63; 1099-1103; 1143)	Agreed	Disputed	FRE 403 FRE 402	
99	Photo Aung-Uncle with Jake as Baby	Agreed	Agreed		
100	1/24/23 Ack Rep - Waive PIP	Agreed	Disputed	FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
101	1/23/23 - Hamilton Letter - Tiev	Agreed	Disputed	FRE 403 FRE 802 FRE 602 FRE 402	
102	2/21/23 Mitsuyoshi - fully compensated email	Agreed	Disputed	FRE 408 FRE 802 FRE 602 FRE 402	
103	3/1/23 Refusal to Arb - Split Mediation	Agreed	Disputed	FRE 802 FRE 602 FRE 403	
104	3/2/23 Mediation payment - Beasley provided	Agreed	Disputed	FRE 802 FRE 602 FRE 403	
105	3/6/23 Agreement to pay for mediation	Agreed	Disputed	FRE 802 FRE 602 FRE 403	
106	Chart Note 11/19/18 (Burdine)	Agreed	Disputed	FRE 802 FRE 602 FRE 403	
107	Chart Note - 3/7/19 (Burdine)	Agreed	Disputed	FRE 802 FRE 702	
108	Chart Note - 3/9/19 standing desk accommodation (Burdine)	Agreed	Disputed	FRE 802 FRE 702	
109	Chart Note - 11/12/19 (Sieberson for Burdine)	Agreed	Disputed	FRE 802 FRE 702	
110	Medical Cost Summary (\$19,055.12)	Agreed	Disputed	FRE 802 FRE 403	
111	EvergreenHealth Xrays of C-Spine dated 5.9.23			FRE 802 FRE 702	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
N/A	Demonstrative: Medial Branch Block Syringe			Because this exhibit is designated as demonstrative, and will presumably not be offered into evidence, no objection to this exhibit is necessary at this time. Defendant reserves the right to assert any objections to the content or use of said exhibit at the time of trial.	
N/A	Demonstrative: Trigger Point Injection Syringe			Because this exhibit is designated as demonstrative, and will presumably not be offered into evidence, no objection to this exhibit is necessary at this time. Defendant reserves the right to assert any	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				objections to the content or use of said exhibit at the time of trial.	
N/A	Demonstrative: Imaging			Because this exhibit is designated as demonstrative, and will presumably not be offered into evidence, no objection to this exhibit is necessary at this time. Defendant reserves the right to assert any objections to the content or use of said exhibit at the time of trial.	

(b) Defendant's Exhibits

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
A-1	Policy 995058083 203 1	Admitted	Disputed	FRE 802	
A-2	Redacted Claim File	Admitted	Disputed	FRE 802 FRE 402 FRE 403	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				Also disputed by Defendants (Exh. 97)	
A-3	Photos of Tiev Vehicle	Admitted	Admitted so long as all vehicle photos and property damages cost records are also admitted; otherwise, disputed (Exh. 3-10)		
A-4	Clinical Notes from Dr. Ramona Burdine	Admitted	Disputed and already disputed by Defendants (Exh. 12-16)	ER 802 ER 702	
A-5	Clinical Notes from Dr. Nha Ke Ton	Admitted	Same as A-4	Same as A- 4	
A-6	Chart Notes from Chiropractor Jimmy Greer	Admitted	Disputed	Same as A- 4; not what it is purported to be – is 4/12/18 Burdine chart note	
A-7	Clinical Notes for Trigger Point Injections	Admitted	Disputed	Objected to by Def's already (Exh. 18); FRE 802, 702	
A-8	Clinical Notes from Medical Assistant Alix M. Koppisch	Admitted	Disputed	Incomplete record; disputed	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				already by Def's (Exh. 18); FRE 802, 702	
A-9	Discharge Evaluation from Chris Soterakopoulos, PT	Admitted	Disputed	Incomplete record, insurance and collateral information ; FRE 802, 702	
A-10	Chart Note from Dr. Ramona Burdine	Admitted	Disputed	Incomplete record; FRE 802, 702	
A-11	Underlying Complaint	Admitted	Disputed	Irrelevant; contains police report Def's have objected to (Exh. 1); FRE 402- 403; FRE 802, 702	
A-12	Underlying Answer	Admitted	Disputed	FRE 402- 403; FRE 802, 702; Irrelevant	
A-13	Underlying Statement of Arbitrability	Admitted	Disputed	Irrelevant	
A-14	Chart Notes from 2nd Trigger Point Injection	Admitted	Disputed	Already objected to by Def (Exh. 21); incomplete	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				record; FRE 802, 702	
A-15	Arbitration Award	Admitted	Disputed	Wholly irrelevant; FRE 402- 403; SCCAR 7.2-7.3; MIL	
A-16	Dr. Bays' IME Report	Admitted	Disputed	FRE 802, 804; Plaintiff's IME report objected to by Def's also (Exh.'s 23-26)	
NA	Illustrative – Claims Handling Timeline	Agreed	Disputed	FRE 403; because this exhibit is attorney- created and illustrative only, and will presumably not be offered into evidence, no objection is necessary at this time, but if offered, this exhibit will be objected to, and all other	

Ex. #	Description	Authenticity	Admissibility	Objection	Admitted
				objections are reserved, as Defendants have done with Plaintiff's demonstrative exhibits (N/A – following Exh.110)	
NA	Illustrative – Medical Treatment Timeline	Agreed	Disputed	Same as N/A above	
NA	Illustrative – Policy Language Powerpoint				

ACTION BY THE COURT

(a) This case is scheduled for a bench trial on October 21, 2024, at 9:00 AM.

(b) Trial briefs shall be filed by October 7, 2024, and a Pretrial Conference is scheduled for October 14, 2024.

This order has been approved by the parties as evidenced by the signatures of their counsel. This order shall control the subsequent course of the action unless modified by a subsequent order. This order shall not be amended except by order of the Court pursuant to agreement of the parties or to prevent manifest injustice.

DATED this 15th day of October, 2024.



HON. JAMAL N. WHITEHEAD
UNITED STATES DISTRICT JUDGE

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1 FORM APPROVED

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CERTIFICATE OF SERVICE

I hereby certify that on the date below written, I electronically filed the foregoing with the Clerk of the Court using the Court's CM/ECF system and caused to be served a true and correct copy of the same to the parties of record below:

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Dated this 30th day of September, 2024, at Bellevue, Washington.

s/ Shannon Liberio

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